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2
3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**

5 * * *

6 Walter Duffy, et al.,

7 Plaintiffs,

8 v.

9 ASNY NY, LLC, et al.,

10 Defendants.

Case No. 2:21-cv-01680-APG-DJA

11 **Order**

12 This is a breach of contract action arising out of timeshare agreements Plaintiffs¹ entered
13 with Defendants.² Plaintiffs sue Defendants for damages, alleging that the timeshares they
14 purchased were not the accessible, clean, affordable vacation opportunities they signed up for.
15 Defendants move to stay discovery, arguing that Plaintiffs are attempting to use discovery to
16 remedy the flaws in their complaint. (ECF No. 81). Because the Court finds that a stay is
17 appropriate here given the potential prejudice to Defendants, it grants the motion to stay. The
18 Court finds these matters properly resolved without a hearing. LR 78-1.

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22 _____
23 ¹ The Plaintiffs include Walter Duffy, Ana Duffy, Sally Duron, Honesto De La Cruz, Emily De
24 La Cruz, William Fenrich, Suvaree Fenrich, Victor McGee, Angela McGee, Marigold Flowers,
25 Charmel Goodloe, Alondre Smith, Terrance Emter, Mary Emter, Gerardo Rodriguez, Yessenia
26 Rodriguez, Calvin Morrison, Sandra Morrison, Robbie Franklin, Julie Hape, Barbara Johnson,
Henry Maxwell, Carol Maxwell, John Caputo, Sandra Gerstner, Dee Terrell, Mae Terrell, Ronald
Arnold, Cynthia Arnold, Roger Workman, Brenda Workman, James Grasse, Rebecca Grasse,
Paul Silverman, and Judith Silverman.

27 ² Defendants include ASNY NY, LLC; The ASNY Company, LLC; Tahiti Village Vacation
28 Club; Tahiti Village Master Owners' Association; Club de Soleil Vacation Club; and Soleil
Management, LLC.

1 **I. Background.**

2 Defendants previously moved to dismiss Plaintiffs' complaint, arguing that the complaint
3 fails to differentiate between the Defendants, instead referring to them each as alter egos and
4 asserting all causes of action and factual allegations against each of them. (ECF No. 74).
5 Plaintiffs argued in response that they "are unable to level allegations with any further specificity
6 as to each Defendant without discovery." (ECF No. 76). Plaintiffs then served eighteen sets of
7 discovery requests, containing forty-three interrogatories and eighty-three requests for production
8 each. (ECF No. 81 at 5-6). The motion to dismiss is pending.

9 Defendants now move to stay discovery, arguing that the discovery requests are just a way
10 for Plaintiffs to get more information to support their claims and amend their complaint after the
11 Court decides Defendants' motion to dismiss. (ECF No. 81 at 5-7). Defendants argue that it is
12 improper for Plaintiffs to attempt and make their case through discovery when they have not filed
13 a well-pleaded complaint in the first place. (*Id.* at 7). Defendants ask the Court to stay discovery
14 pending the result of the motion to dismiss so that Defendants do not have to respond to discovery
15 requests they consider to be a fishing expedition. (*Id.*).

16 Plaintiffs respond that, because Defendants failed to meet and confer before filing their
17 motion, the Court should deny it. (ECF No. 83). They add that a stay is improper because
18 Defendants' motion to dismiss really seeks a more definite statement, relief which would not be
19 dispositive of the entire case. (*Id.* at 12-15). Plaintiffs conclude that more discovery is
20 necessary—and proper—before the Court decides the motion for a more definite statement
21 because information about each Defendant's participation in Plaintiff's claims is in Defendants'
22 sole possession. (*Id.* at 15-17).

23 Defendants reply that they did not meet and confer before filing their motion because they
24 were caught off guard by Plaintiffs' revelation their discovery requests were intended to find
25 support for an amended complaint. (ECF No. 84 at 4). Defendants ask the Court to not decide
26 their motion on the meet and confer alone, but instead grant the stay because "[d]iscovery is not
27 the proper tool to fix an improperly pleaded complaint. (*Id.* at 6). Defendants disagree with
28 Plaintiffs' argument that the motion to dismiss is not potentially dispositive of the entire case

1 because if the Court grants it “it could very well mean that entire claims, Defendants, or both will
2 have to be removed from the case.” (*Id.* at 7).

3 **II. Discussion.**

4 The Court grants Defendants’ motion to stay. Courts have broad discretionary power to
5 control discovery. *See, e.g., Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). In
6 deciding whether to grant a stay of discovery, the Court is guided by the objectives of Rule 1 to
7 ensure a just, speedy, and inexpensive determination of every action. *See Kidneigh v.*
8 *Tournament One Corp.*, No. 2:12-cv-02209-APG-CWH, 2013 WL 1855764, at *2 (D. Nev. May
9 1, 2013). “The Federal Rules of Civil Procedure do not provide for automatic or blanket stays of
10 discovery when a potentially dispositive motion is pending.” *Tradebay, LLC v. eBay, Inc.*, 278
11 F.R.D. 597, 600 (D. Nev. 2011). However, preliminary issues such as jurisdiction, venue, or
12 immunity are common situations that may justify a stay. *See Twin City Fire Ins. v. Employers of*
13 *Wausau*, 124 F.R.D. 653 (D. Nev. 1989); *Ministerio Roca Solida v. U.S. Dep’t of Fish & Wildlife*,
14 288 F.R.D. 500, 506 (D. Nev. 2013) (granting stay based in part on alleged lack of subject matter
15 jurisdiction). Further, motions to stay discovery pending resolution of a dispositive motion may
16 be granted when: (1) the pending motion is potentially dispositive; (2) the potentially dispositive
17 motion can be decided without additional discovery; and (3) the Court has taken a “preliminary
18 peek” at the merits of the potentially dispositive motion to evaluate the likelihood of dismissal.
19 *See Kor Media Group, LLC v. Green*, 294 F.R.D. 579, 581 (D. Nev. 2013).

20 A party seeking to stay discovery pending resolution of a potentially dispositive motion
21 bears the heavy burden of establishing that discovery should be stayed. *See, e.g., Turner*
22 *Broadcasting System, Inc. v. Tracinda Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997) (noting that a
23 stay of discovery may be appropriate where the complaint was “utterly frivolous, or filed merely
24 for settlement value.”). When deciding whether to issue a stay, a court must take a “preliminary
25 peek” at the merits of the dispositive motion pending in the case. *Tradebay*, 278 F.R.D. at 602-
26 603. In doing so, a court must consider whether the pending motion is potentially dispositive of
27 the entire case, and whether that motion can be decided without additional discovery. *Id.* While
28 motions for more definite statement “should not be granted to require evidentiary detail that may

1 be the subject of discovery,” the complaint must still be sufficient enough so that “an inference
 2 may be drawn that evidence on [its] points will be introduced at trial.” *Woods v. Reno*
 3 *Commodities, Inc.*, 600 F.Supp. 574, 578, 580 (D. Nev. 1984).

4 This “preliminary peek” is not intended to prejudice the outcome, but to evaluate the
 5 propriety of a stay of discovery “with the goal of accomplishing the objectives of Rule 1.” *Id.*
 6 (citation omitted). That discovery may involve inconvenience and expense is not sufficient,
 7 standing alone, to support a stay of discovery. *Turner Broadcasting*, 175 F.R.D. at 556. An
 8 overly lenient standard for granting requests to stay would result in unnecessary delay in many
 9 cases. *Long v. Aurora Bank, FSB*, No. 2:12-cv-00721-GMN-CWH, 2012 WL 2076842, at *1 (D.
 10 Nev. June 8, 2012).

11 *Mujica v. AirScan Inc.* stands for the proposition that a plaintiff must satisfy Rule 8’s
 12 pleading requirement before a court can permit discovery. *Mujica v. AirScan Inc.*, 771 F.3d 580,
 13 593-94 (9th Cir. 2014). There, the Ninth Circuit joined the Tenth and Eleventh Circuits in
 14 concluding that a district court lacks discretion to permit a plaintiff to take discovery when the
 15 plaintiff has not yet satisfied Rule 8’s plausibility standard. *Id.* at 593 n. 7. “The Supreme Court
 16 has stated...that plaintiffs must satisfy the pleading requirements of Rule 8 *before* the discovery
 17 stage, not after it.” *Id.* (emphasis in original) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

18 The Court grants Defendants’ motion to stay discovery.³ The first factor weighs in favor
 19 of a stay because the pending motion to dismiss is potentially dispositive of all claims against
 20 Defendants. As Defendants point out, the crux of their argument against Plaintiffs is that
 21 Plaintiffs have not differentiated between Defendants in making their claims. Each of Plaintiffs’
 22 claims is alleged against each Defendant, meaning that, if the Court agrees with Defendants, each

24 ³ The Court declines to decide the motion to stay on the meet and confer because “[i]f parties fail
 25 to meet and confer in good faith, the Court may exercise its discretion to decide the motion to stay
 26 discovery on its merits.” *Brennan v. Cadwell Sanford Deibert & Garry LLP*, No. 2:20-cv-00799-
 27 JAD-VCF, 2020 WL 5653673, at *2 (D. Nev. Sept. 22, 2020) (internal citations and quotations
 28 omitted). It does not appear that the parties’ positions would change in a meet and confer and,
 given that the issues are fully briefed, it is more efficient for the Court to decide these motions on
 their merits. The parties must closely abide by the meet-and-confer requirements in the Local
 Rules in the future.

1 of Plaintiffs' claims could be dismissed. The Court is not persuaded by Plaintiffs' argument that,
2 because Defendants move for a more definite statement, that the motion is not dispositive.
3 Defendants move for this relief in the alternative and primarily argue that the Court should
4 dismiss the complaint for failure to state a claim.

5 The second factor weighs in favor of a stay. A motion to dismiss, by its nature, does not
6 require additional discovery to decide. And while Plaintiffs argue that motions for a more
7 definite statement should not be granted to require evidentiary detail that may be the subject of
8 discovery, that does not mean that discovery is necessary to decide the motion itself. To the
9 contrary, discovery is not necessary for the Court to determine whether the complaint is sufficient
10 to draw an inference that evidence on its points will be introduced at trial.

11 The third factor also weighs in favor of a stay. Having taken a preliminary peek at the
12 merits of Defendants' motion to dismiss, the Court finds that staying discovery would accomplish
13 the objectives of Rule 1, especially considering that Plaintiffs must satisfy Rule 8's pleading
14 requirement before engaging in discovery. While the Court does not prejudge the outcome, it
15 finds that Defendants' motion is likely meritorious. A stay is proper here because, if discovery
16 proceeds and the Court later grants Defendants' motion to dismiss, Defendants would be
17 prejudiced by spending time and money responding to premature discovery. The prejudice is
18 increased if Plaintiffs discovered facts without which they otherwise could not assert a claim
19 sufficient to meet Rule 8's standards. On the other hand, if discovery is stayed and the Court later
20 denies Defendants' motion to dismiss, Plaintiffs may only suffer a delay in receiving answers to
21 their discovery requests. Balancing these prejudices, the Court finds that a discovery stay is
22 appropriate here.

23 **IT IS THEREFORE ORDERED** that Defendants' motion to stay discovery (ECF No.
24 81) is **granted**.

25
26 DATED: May 31, 2022

27 
28 DANIEL J. ALBRECHTS
UNITED STATES MAGISTRATE JUDGE